Kumpulan Ladang-Ladang Trengganu Sdn Bhd v Pentadbir Tanah Daerah Kuala Nerus

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO T-01(NCVC)(A)-87–02 OF 2023
AZIZAH NAWAWI, MOHD NAZLAN AND AZIZUL AZMI ADNAN JJCA
13 MAY 2025

Land Law — Acquisition of land — Objection against award — Application by appellant to obtain extension of time in order to object award of compensation dismissed by High Court — Whether time to raise objection under Form N was only after receipt of Form H — Whether there were special circumstances to enlarge time — Land Acquisition Act 1960 ss 14 & 38(4)

The appellant was granted a lease by the Terengganu State Economic Development Corp for parcels of land ('the land'). The lands were subsequently listed for the purpose of acquisition. On the date of the hearing of the land acquisition ie 19 June 2022, the respondent verbally awarded the appellant compensation for the acquisition of the lands. On 12 August 2022, the full amount of compensation was paid to the appellant. The appellant submitted and filed: (a) Form N to object to the award given by the respondent; and (b) Form H which stated that the appellant 'accepts the amount of compensation awarded with objection'. Although Form N was submitted and accepted by the respondent, the respondent informed the appellant that the objection could not be processed and/or implemented as the same was filed outside the required statutory period pursuant to ss 38(3) and (4) of the Land Acquisition Act 1960 ('the LAA'). Subsequently, the appellant filed an originating summons for an extension of time to file Form N but the same was dismissed by the learned High Court judge. Hence, this appeal. The appellant submitted that: (i) time to raise an objection under Form N was only after receipt of Form H; and (ii) there were special circumstances to enlarge time ie, inter alia: (1) the compensation amount offered was inadequate; and (2) the market value of the acquired land was too low and did not reflect the actual market value.

Held, dismissing the appeal with costs:

(1) Section 38(3)(a) of the LAA was very clear, in that where the appellant was present or represented before the Land Administrator at the time when the Land Administrator made his award under s 14, he had to file Form N within six weeks from the date of Land Administrator's award. Section 14 of the LAA was clear, that after completing the enquiry under

s 12, the Land Administrator must prepare a written award in Form G and that the award was final and conclusive, regardless of whether the interested parties attended the enquiry. Therefore, it was wrong to say that the award under s 14 of the LAA was merely an offer which the owner may accept or reject after being informed of the same via Form H. When s 38(3)(a) of the LAA was read with s 14, the appellant was required to make their objection by a written application in Form N to the Land Administrator pursuant to s 38(1) within six weeks from the date of the Land Administrator's award made at the conclusion of the inquiry, that was to say, six weeks from 19 June 2022. The last date for the appellant to file Form N was 30 July 2022. The appellant however had only filed their objection on 18 September 2022 and there was a delay of 50 days. By reason of the delay, the filling of the Form N was rightly rejected by the respondent (see paras 35 & 44–45).

(2) The mere difference of opinion by the Government and the appellant's private valuer, as regards the value of the land in was not a special circumstance. The learned judge had taken all the relevant considerations before exercising his discretion not to grant the extension of time to file Form N, bearing in mind that an application for extension of time could only be granted sparingly under special circumstances. The learned judge had also made a finding that the Land Administrator's actions were lawful and in line with procedures under the LAA. Any disadvantage faced by the appellant was due to their own delay in filing the objection, despite knowing the process (see paras 60–61).

[Bahasa Malaysia summary

Perayu telah diberikan pajakan oleh Perbadanan Memajukan Iktisad Negeri Terengganu untuk petak-petak tanah ('tanah'). Tanah-tanah tersebut kemudian disenaraikan untuk tujuan pengambilalihan. Pada hari pendengaran kes pengambilan tanah iaitu 19 Jun 2022, responden secara lisan menganugerahkan pampasan kepada perayu untuk pengambilan tanah tersebut. Pada 12 Ogos 2022, jumlah penuh pampasan dibayar kepada perayu. Perayu mengemukakan dan memfailkan: (a) Borang N untuk membantah pampasan yang diberikan oleh responden; dan (b) Borang H yang menyatakan bahawa perayu 'menerima jumlah pampasan yang diberikan dengan bantahan'. Walaupun Borang N telah dihantar dan diterima oleh responden, responden memaklumkan kepada perayu bahawa bantahan tersebut tidak dapat diproses dan/atau dilaksanakan kerana ia difailkan di luar tempoh berkanun yang ditetapkan menurut ss 38(3) dan (4) Akta Pengambilan Tanah 1960 ('APT'). Kemudian, perayu memfailkan saman permulaan untuk lanjutan masa bagi memfailkan Borang N tetapi ianya ditolak oleh hakim Mahkamah Tinggi yang bijaksana. Oleh itu, rayuan ini. Perayu berhujah bahawa: (i) masa untuk mengemukakan bantahan di bawah Borang N adalah hanya selepas menerima Borang H; dan (ii) terdapat keadaan khas untuk

memanjangkan masa iaitu antaranya: (1) jumlah pampasan yang ditawarkan adalah tidak mencukupi; dan (2) nilai pasaran tanah yang diambil terlalu rendah dan tidak mencerminkan nilai pasaran sebenar.

Diputuskan, menolak rayuan dengan kos:

(1) Seksyen 38(3)(a) APT adalah sangat jelas, bahawa apabila perayu hadir atau diwakili di hadapan Pentadbir Tanah semasa Pentadbir Tanah membuat anugerahnya di bawah s 14, dia hendaklah memfailkan Borang N dalam tempoh enam minggu dari tarikh anugerah Pentadbir Tanah. Seksyen 14 LAA adalah jelas, bahawa selepas menyelesaikan siasatan di bawah s 12, Pentadbir Tanah mesti menyediakan anugerah bertulis dalam Borang G dan bahawa anugerah tersebut adalah muktamad dan konklusif, tanpa mengira sama ada pihak berkepentingan hadir dalam siasatan tersebut. Oleh itu, adalah salah untuk mengatakan bahawa anugerah di bawah s 14 APT hanyalah satu tawaran yang pemilik boleh terima atau tolak selepas dimaklumkan melalui Borang H. Apabila s 38(3)(a) APT dibaca bersama s 14, perayu dikehendaki membuat bantahan mereka melalui permohonan bertulis dalam Borang N kepada Pentadbir Tanah menurut s 38(1) dalam tempoh enam minggu dari tarikh anugerah Pentadbir Tanah dibuat selepas tamat siasatan, iaitu, enam minggu dari 19 Jun 2022. Tarikh terakhir untuk perayu memfailkan Borang N adalah 30 Julai 2022. Walau bagaimanapun, perayu hanya memfailkan bantahan mereka pada 18 September 2022 dan terdapat kelewatan selama 50 hari. Atas sebab kelewatan tersebut, pengisian Borang N telah ditolak dengan betul oleh responden (lihat perenggan 35 & 44–45).

(2) Perbezaan pendapat semata-mata antara Kerajaan dan penilai swasta perayu mengenai nilai tanah bukanlah satu keadaan khas. Hakim yang bijaksana telah mengambil semua pertimbangan yang relevan sebelum menggunakan budi bicara beliau untuk tidak meluluskan lanjutan masa bagi memfailkan Borang N, dengan mengambil kira bahawa permohonan lanjutan masa hanya boleh diberikan secara berhemat dalam keadaan khas. Hakim yang bijaksana juga mendapati bahawa tindakan Pentadbir Tanah adalah sah dan selaras dengan prosedur di bawah APT. Sebarang kerugian yang dialami oleh perayu adalah disebabkan kelewatan mereka sendiri dalam memfailkan bantahan, walaupun mereka mengetahui proses tersebut (lihat perenggan 60–61).]

Cases referred to

Arthur Ponniah Gurubatham & 1 Lagi v Pentadbir Tanah Wilayah Persekutuan [2007] MLJU 728; [2008] 3 CLJ 17, HC (refd)

Damai Motor Kredit Sdn Bhd & Anor v Kementerian Kerja Raya Malaysia [2012] MLJU 1803; [2015] 1 CLJ 44, CA (refd)

Dynamic Plantations Bhd v Pentadbir Tanah Daerah Segamat [2008] 7 MLJ

427; [2008] 3 CLJ 37, HC (not folld)
Government of Malaysia v Datuk Haji Kadir Mohamd Mastan and another application [1993] 3 MLJ 514; [1993] 4 CLJ 98, HC (refd)
Instantcolor System Sdn Bhd v Inkmaker Asia Pacific Sdn Bhd [2017] 2 MLJ 697, FC (refd)
Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd [2004] 1 MLJ 257; [2004] 1 CLJ 239, FC (refd)
Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan [2007] 5 MLJ 601; [2007] 5 CLJ 71, CA (folld)
Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan [2008] 6 MLJ 763; [2009] 1 CLJ 13, FC (refd)
Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Inch Kenneth Kajang Rubber Ltd & Anor [2011] 4 MLJ 403; [2011] 1 CLJ 95, CA (refd)
Sungei Bongkoh Estate Sdn Bhd v Pentadbir Tanah Daerah Kuala Muda [1994] MLJU 441; [1995] 1 CLJ 400, HC (refd)
Tan Bun Cheong lwn Pentadbir Tanah, Pejabat Daerah dan Tanah Bukit Mertajam, Pulau Pinang [1992] MLJU 82; [1992] CLJU 85; [1992] 1 LNS 85, HC (refd)
UDA Holdings Bhd v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2012] 6 MLJ 242; [2012] 10 CLJ 867, HC (refd)

Legislation referred to

Land Acquisition Act 1960 ss 12, 14, 14(1), (2), 16, 16(2), 38, 38(1), (3), (3)(a), (3)(b), (4), (5), First Schedule, Forms G, H, N, O
Rules of Court 2012 O 92 r 4

Appeal from: *Kumpulan Ladang-Ladang Terengganu Sdn Bhd v Pentadbir Tanah Daerah Kuala Nerus* [2023] MLJU 3420 (High Court, Kuala Terengganu)

Tengku Nazmi bin Tengku Anuar (with Wong Yan Zhang) (Azmi & Assoc) for the appellant.
Afifah bt Mamat (Terengganu Legal State Offices) for the respondent.

Azizah Nawawi JCA:

INTRODUCTION

[1] This is an appeal against the decision of the learned High Court judge dated 7 February 2023 in dismissing the appellant's originating summons.

[2] In the originating summons ('OS') dated 21 October 2022, the appellant had sought the following orders:

(a) an extension of time for the appellant to serve and file objections through Form N (application for objections to be referred to court) ('Form N') pursuant to sub-s 38(1) of the Land Acquisition Act 1960 ('the LAA 1960') within 14 days from the date of this order;

(b) that the respondent accepts the service and filing of objections through Form N pursuant to sub-s 38(1) of the LAA 1960 within 14 days from the date of this order; and

(c) that after Form N is served and filed pursuant to sub-s 38(1) of the LAA 1960, the respondent is required to make a reference to the court through Form O pursuant to sub-s 38(5) of the LAA 1960.

THE SALIENT FACTS

[3] The appellant was granted a lease by the Terengganu State Economic Development Corp for the following parcels of land ('the said lands'):

(a) GRN 13085, Lot No 8169 (10541), Mukim Pakoh, Kuala Nerus District, Terengganu, covering an area of 143.3369 hectares;

(b) HSD 400, Lot No PT 883K, Mukim Pakoh, Kuala Nerus District, Terengganu, covering an area of 895.8259 hectares;

(c) GRN 6005, Lot No 7254 (10540), Mukim Pakoh, Kuala Nerus District, Terengganu, covering an area of 82.2783 hectares;

(d) HSD 399, Lot No PT 642K, Mukim Pakoh, Kuala Nerus District, Terengganu, covering an area of 635.752 hectares. Property held under Title GRN 6001, Lot Number 6558, Mukim Hulu Nerus, Setiu District, Terengganu, with an area of 1661.4191 hectares; and

(e) property held under Title GRN 6004, Lot Number 7253, Mukim Hulu Nerus, Setiu District, Terengganu, with an area of 224.2837 hectares.

[4] The lease for all lots of land was registered on 29 August 1983 for a period of 99 years, commencing from 1 January 1973 and ending on 31 December 2071.

[5] The said lands were subsequently listed in the schedule of Form D, 'Declaration of Proposed Land Acquisition' for the purpose of the 'East Coast Rail Link (ECRL) Project in Setiu District, Terengganu' through *Gazette* No 1357 dated 16 December 2021 ('land acquisition gazette').

[6] Vide a letter dated 8 June 2022, the appellant was informed that hearing of the land acquisition was scheduled on 19 June 2022.

[7] On the date of the hearing (19 June 2022), the respondent verbally

awarded the appellant compensation for the acquisition of the said lands. The respondent also averred that he had informed the appellant on 19 June 2022 that if the respondent is not happy with the award, the respondent may file an objection in Form N within six weeks from the date of the oral award.

[8] The appellant stated that from the notes recorded by their appraiser from Raine & Horne International Zaki + Partners Sdn Bhd, who had also attended the enquiry, the amount of compensation/award are as follows:

(a) Lot 8169 (10541) — RM473,701.11;

(b) Lot PT883K — RM1,248,824.99;

(c) Lot 7254 (10540) — RM224,864.58; and

(d) Lot PT642K — RM2,326,746.26.

[9] Subsequently, the appellant received Form H ('Form H') dated 19 June 2022 from the respondent on 10 August 2022, nearly two months after the hearing date. According to Form H, the respondent offered the appellant the following compensation for the acquisition of the said lands:

(a) Lot 8169 (10541) — RM471,201.11;

(b) Lot PT883K — RM1,033,687.62;

(c) Lot 7254 (10540) — RM222,364.40; and

(d) Lot PT642K — RM2,141,705.86.

[10] On 12 August 2022, the full amount of compensation was paid to the appellant.

[11] On 18 September 2022, the appellant personally attended the respondent's office to submit and file the following forms:

(a) Form N dated 18 September 2022, to object to the award given by the respondent on 19 June 2022 for the said lands pursuant to s 38(1) of the LAA 1960; and

(b) Form H dated 19 June 2022 for the said lands, which was signed by the appellant on 18 September 2022, where it was stated that the appellant '(b) accepts the amount of compensation awarded, with objection'.

[12] The filing of Forms N and H has been acknowledged by the respondent as indicated by the receipt stamp placed on the duplicates of Forms N and H, both dated 18 September 2022.

[13] Although Form N was submitted and accepted by the respondent, since the filing of Form N has exceeded the statutory time limit, the respondent informed the appellant of the rejection of Form N in a letter dated 5 October 2022. The respondent informed the appellant that the objection submitted by the appellant through Form N could not be processed and/or implemented as the same was filed outside the required statutory period pursuant to sub-s 38(3) and (4) of the LAA 1960.

[14] Subsequently, the appellant filed the OS for an extension of time to file Form N but the same was dismissed by the learned High Court judge. Hence this appeal.

DECISION OF THE HIGH COURT JUDGE

[15] The learned judge had dismissed the OS. The learned judge held that during the hearing/investigation of the acquisition of the appellant's said lands that was held on 19 June 2022 before the Land Administrator, the appellant and their valuer from Raine & Horne International Zaki + Partners Sdn Bhd were present.

[16] According to sub-s 38(3)(a) of the LAA 1960, since the appellant and their valuer had attended the hearing, if the appellant was not satisfied with the compensation awarded by the Land Administrator, they must file an objection using Form N within six weeks from the Land Administrator's decision.

[17] Since the Land Administrator's decision was given on 19 June 2022, the deadline to submit an objection in Form N was 30 July 2022. However, the appellant had only filed the Form N on 18 September 2022, which was about 50 days late.

[18] On the issue of special circumstances, the learned judge found that since the appellant had failed to file Form N within six weeks of the Land Administrator's decision, this amount to a breach of sub-s 38(3)(a) of the LAA 1960. Added to that, the learned judge made a finding that the appellant has failed to present any special reason for the court to exercise its discretion under sub-s 38(4) of the LAA 1960 to grant an extension of time for filing Form N.

[19] For the aforesaid reasons, the OS was dismissed by the learned judge.

OUR DECISION

[20] The appellant has raised two issues before this court:

(a) that time to raise an objection under Form N is only after receipt of Form H; and

(b) that there are special circumstances to enlarge time.

[21] The appellant had submitted that the learned judge is clearly erroneous in his decision that the deadline to submit an objection against the amount of compensation through Form N was 30 July 2022, that is six weeks after the date the Land Administrator/respondent gave the decision on the quantum of compensation on 19 June 2022.

[22] The appellant took the position that on 30 July 2022, the appellant had not received the official award in Form H. The respondent only delivered Form H to the appellant on 10 August 2022, which was approximately seven weeks and three days after the verbal decision was given on 19 June 2022.

[23] Therefore, it is the submission of the appellant that the period for lodging an objection to the award given by the respondent should begin from the date the appellant received Form H, which was on 10 August 2022. This is because the award made during the hearing on 19 June 2022 contradicts the award as contained in Form H received on 10 August 2022. Therefore, the appellant could not properly raise an objection to the respondent, as the award given on 19 June 2022 was clearly not the final and/or complete award.

[24] The appellant relied on the case of *Dynamic Plantations Bhd v Pentadbir Tanah Daerah Segamat* [2008] 7 MLJ 427; [2008] 3 CLJ 37. Essentially, the High Court in this case decided that an award under s 14 of the LAA 1960 is considered complete only after it has been communicated to the parties involved through Form H. The High Court held as follows:

> [13] It is my view that these provisions are mandatory provisions. As far as the person interested is concerned, the Land Administrator's award under s 14(1) is complete only upon compliance of s 16. *The s 14(1) award is only complete and good in law upon it being communicated to the person interested and it must be communicated upon service of notice in Form H* and not in another manner, which shall include an extract from the written award of the Land Administrator in Form G. Section 14(1) cannot be read in isolation or independently of s 16(1) and (2) in so far as the person interested is concerned. *It is in this Form H that a formal offer to compensate the land acquired was officially communicated to the person interested (see para 2) for the first time. It is also in this Form that for the first time the person interested was asked to acknowledge receipt of the above offer and to express himself whether to accept the offer or to accept the offer under protest or not to accept the offer at all.*

A [14] How on earth is the person interested to exercise his options if the award was made orally at the conclusion of the enquiry on 27 May 2004 as contended by the defendant in this case? By any account an oral award is bad in law. It has no legal basis whatsoever under the Land Acquisition Act 1960, for the Act only provides a single mode as to how an award is to be formulated and communicated ie through
B the mechanism of s 14(1) and 16(1) and (2) of the same.

[15] If the Land Administrator is minded to make an award upon the conclusion of the enquiry in a situation as envisaged by s 38(3)(a) of the Act, it is equally incumbent upon him to adhere to the requirements of s 16 of the Act, ie, he is also to prepare and serve on the person interested in such land a notice in Form H which,
C inter alia, shall include extracts from the written award in Form G. It is not enough for him to casually issue an oral award and months later serve upon the person interested the Form G and the requisite notice under 16 and then declare that the award was duly made and communicated to the person interested on the instant the oral award was made.

D [16] From the facts of this case, it is clear that the Land Administrator at the conclusion of the enquiry pronounced an oral award and deferred the written award as required by law until 2 July 2004 when he prepared Form G and filed it. In my view the conduct of the enquiry in this case was procedurally in error, amounting to a blatant disregard of the requirement of the law as embodied in ss 14 and 16 of the
E Act.

[17] Additionally, even in Indian land acquisition law, the court has interpreted that the collectors award has got to be in writing and not made orally. The mere signing of a document or oral pronouncement of an award by the Land Administrator expressing his opinion as to the amount of compensation to be offered to persons
F whose land is being acquired does not amount to the making of an award (*Padamsi Narain v Collector of Thana* AIR [1922] Bom 16). There can be finality of the award only when it is filed in the collector's office, and becomes a part of the office record and then it shall be conclusive evidence between Government and the land owner till the proposed award is filed and finally communicated it remains only a proposal
G and not an award (*Madho Ram v Collector* AIR [1962] J&K 37). *Therefore, in this case, an oral award given by the Land Administrator upon the conclusion of the enquiry on 27 May 2004 only amounted to a proposal of the award and not an award in the strict sense as demanded by s 14 and s 16 of the Act.*

H **[25]** It is therefore the submission of the appellant that the verbal award given by the respondent on the hearing day was not a final award as the appellant did not receive Form G and/or Form H on that day, which would have allowed the appellant to know the final amount of compensation to be awarded and to decide whether to object to the amount of compensation given.

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[26] In this regard, the six weeks granted to the appellant to file an objection under s 38(3)(a) of the LAA 1960 should begin from the date Form H and/or Form G was served on the appellant, which was 10 August 2022. Therefore, the

filing of Form N by the appellant on 18 September 2022 was still within the timeframe allowed for filing an objection as provided under s 38(3) of the LAA 1960.

Non-pleaded issue

[27] The appellant's argument that Form N was filed within the timeframe allowed by s 38 of the LAA 1960 is not a pleaded issue. In the OS, the appellant is only seeking for an extension of time to file and serve the objections through Form N pursuant to sub-s 38(1) of the LAA 1960. There is no application for a declaratory order that Form N was filed within the time specified in s 38 LAA 1960.

[28] The Federal Court in *Instantcolor System Sdn Bhd v Inkmaker Asia Pacific Sdn Bhd* [2017] 2 MLJ 697 held as follows:

> [60] *It is a cardinal rule that parties are bound by their pleadings and are not allowed to adduce facts and submissions on matters which they had not pleaded*. Cases must be decided on the issues on the record; and if it is desired to raise other issues they must be placed on the record by amendment (see: *State Government of Perak v Muniandy* [1986] 1 MLJ 490; *Anuar bin Mat Amin v Abdullah bin Mohd Zain* [1989] 3 MLJ 313; and *Blay v Pollard and Morris* [1930] 1 KB 628).
>
> [61] The issues of constructive trust, fraud and fraudulent breach of trust as raised by the plaintiff are vital issues in bringing into play the exceptions to limitation period under s 22 of the Act. They must be specifically pleaded in the pleadings, failing which, as rightly held by the Supreme Court in *Lee Ah Chor v Southern Bank Bhd* [1991] 1 MLJ 428, they 'could not be allowed to be argued and to succeed on appeal'.

The Land Acquisition Act 1960

[29] The LAA 1960 provides for proceedings relating to land acquisition and the provisions of the LAA must be strictly adhered to. The LAA 1960 is a specialised Act governing land acquisition, the process for assessing compensation related to such acquisitions, and all related matters, including the procedures, conditions, and legal avenues available to any party dissatisfied with a compensation award. Given its status as a special Act, we are of the considered opinion that its statutory provisions must be strictly followed and applied to all relevant parties. Every procedural step leading to the final determination of any award shall be conducted in accordance with the provisions of the LAA 1960 (see *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Inch Kenneth Kajang Rubber Ltd & Anor* [2011] 4 MLJ 403; [2011] 1 CLJ 95).

[30] In the present appeal, since the appellant had submitted extensively that Form N was filed within the timeframe allowed by s 38 of the LAA 1960, we

will start by looking at the relevant legal provision in the LAA 1960. Section 12 is on the enquiry by the Land Administrator and it provides as follows:

> (1) On the date appointed under section 10(1) the Land Administrator shall make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case, according to the consideration set out in the First Schedule;
>
> Provided that the Land Administrator may obtain a written opinion on the value of all scheduled lands form a valuer prior to making an award under section 14.
>
> (2) The Land Administrator shall also enquire into the respective interests of all persons claiming compensation or who in his opinion are entitled to compensation in respect of the scheduled land, and into the objections, if any, made by any interested person to the area of any scheduled land.
>
> (3) The Land Administrator may for a sufficient cause to be recorded by him in writing postpone any enquiry or adjourn any hearing of an enquiry from time to time.
>
> (4) The Land Administrator shall record all the evidence during the enquiry.

[31] Section 14 of the LAA 1960 provides that awards of compensation for compulsory acquisition are assessed and decided on by a land administrator. Upon the conclusion on an enquiry, the land administrator will prepare a written award under his hand in Form 'G' of the LAA and every such award shall be final and conclusive. Subsections 14(1) and (2) of the LAA 1960 reads as follows:

> 14 Award of the Land Administrator
>
> (1) Upon the conclusion of the enquiry under section 12 relating to any scheduled land the Land Administrator shall prepare a written award under his hand in Form G, in which he shall, in respect of each separate area of scheduled land, make a separate award in respect of each person whose interest in the land has been established in such enquiry.
>
> (2) Every award prepared under subsection (1) shall be filed in the office of the Land Administrator and shall be final and conclusive evidence of the area of any scheduled land, of its value in the opinion of the Land Administrator, and of the apportionment of the compensation awarded by the Land Administrator, whether the persons interested therein have or have not appeared at the enquiry ...

[32] Next is the application of s 16 of the LAA 1960, which requires Form'H' to be served on the appellant by the respondent. Form 'H' is a notice of award and an offer of compensation. Subsection 16(2) provides that Form 'H' will include an extract from the written award of the respondent in Form 'G' referred to in s 14. Section 16(2) reads:

16 Service of award

...

(2) Every notice in Form H shall include an extract from the written award of the Land Administrator in Form G, relating to the land in which the person to whom such notice is addressed has an interest.

[33] If the appellant wants to raise an objection to the award, the appellant would have to serve Form 'N' on the respondent pursuant to s 38 of the LAA 1960, which reads:

38 Form and content of application, etc

(1) Any objection made under section 37 shall be made by a written application in Form N to the Land Administrator requiring that he refer the matter to the court for its determination, and a copy thereof shall be forwarded by the Land Administrator to the Registrar of the court.

(2) Every application under subsection (1) shall state fully the grounds on which objection to the award is taken, and at any hearing in court no other grounds shall be given in argument, without leave of the court.

(3) Every application under subsection (1) shall be made:

(a) if the person making it was present or represented before the Land Administrator at the time when the Land Administrator made his award, within six weeks from the date of the Land Administrator's award under section 14;

(b) in other cases, within six weeks of the receipt of the notice from the Land Administrator under section 16 or within six months from the date of the Land Administrator's award under section 14 whichever period shall first expire

(4) The period of six weeks prescribed by subsection (3)(a) and the periods of six weeks and six months prescribed under subsection (3)(b) shall not be capable of enlargement by any Court, except in such special circumstances as the Court may think fit.

(5) On receiving any application under subsection (1) the Land Administrator shall, subject to section 39, within six months refer the matter to the Court by a reference in Form O.

(6) Where the Land Administrator has failed to make a reference to the Court within the period specified in subsection (5), the Land Administrator or any person interested may apply to the Court for an extension of the said period.

(7) Where the Land Administrator has failed to make a reference to the Court within the period specified in subsection (5) or within any extension of such period under subsection (6), the Court may, on application by any person interested deal with the objection under subsection 38(1) in such manner as it deems fit, and in order to enable the Court to do so, the Court

A may give such directions to the Land Administrator or to any person interested as it deems necessary or expedient, and without prejudice to the generality of this power, such directions may include a direction requiring the Land Administrator or any other person to appear before the Court to give evidence, or to produce before the Court such records, or other
B documents, as the Court may specify.

[34] On a proper construction of sub-s 38(3) of the LAA 1960, there appears to be two sets of time limits available for two different situations:

C (a) for those *who were present or represented before the Land Administrator at the time when the Land Administrator made his award under s 14, he has to file Form N within six weeks from the date of Land Administrator's award*; and

D (b) for others, that is, those who were not present before the Land Administrator. For this category, they have to file the Form N within six weeks of the receipt of the notice from the Land Administrator under s 16 or within six months from the date of the Land Administrator's award under s 14, whichever period shall first expire.

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[35] Therefore, we are of the considered opinion that sub-s 38(3)(a) of the LAA 1960 is very clear, in that where the appellant was present or represented before the Land Administrator at the time when the Land Administrator made his award under s 14, he has to file Form N within six weeks from the date of
F Land Administrator's award.

[36] For those who were not present before the Land Administrator, then pursuant to sub-s 38(3)(b), they must file Form N within six weeks of receiving the notice under s 16 or within six months from the date of the award under
G s 14, whichever comes first.

[37] The purpose of the distinction is very clear, to cater for parties who have appeared and were present, against those who were absent and were not represented during the enquiry and the delivery of the award. For those who
H were absent during the enquiry and delivery of the award, since they have no knowledge of the same, they can only file Form N upon being notified of the award via Form H under s 16 of the LAA 1960, or within six months from the date of the Land Administrator's award under s 14, whichever period shall first expire.

I

[38] Added to that, we cannot agree with the appellant's contention that the six weeks granted to the appellant to file an objection under s 38(3)(a) of the LAA 1960 should begin from the date Form H and/or Form G was served on the appellant. This is because it is clear from s 16 of the LAA 1960 that Form H

relates to the delivery of the award and not the time frame for filing an objection. The time frame to file an objection is provided by sub-s 38(3)(a) or (b) of the LAA 1960.

[39] The same position was taken by the High Court in three cases. The first case is *Sungei Bongkoh Estate Sdn Bhd v Pentadbir Tanah Daerah Kuala Muda* [1994] MLJU 441; [1995] 1 CLJ 400, where the court rejected the applicant's request for an extension of time to file an objection against the compensation determined by the defendant concerning the land acquisition under the LAA 1960. In this case, the inquiry before the Land Administrator was concluded on 20 November 1993 in the presence of the plaintiff's representative, and the amount of compensation was communicated to him. However, the plaintiff only filed an objection to the compensation on 12 July 1994.

[40] Justice Hishamuddin bin Mohd Yunus referred to sub-s 38(3)(a) of the LAA 1960 and held as follows:

> The above provision of s 38(3)(a) when read with s 14 requires the plaintiff to make their objection (by written application in Form N to the *Pentadbir*: see s 38(1) within six weeks from the date of the *Pentadbir*'s award made at the conclusion of the inquiry, that is to say, six weeks from 20 November 1993.

[41] In *Arthur Ponniah Gurubatham & 1 Lagi v Pentadbir Tanah Wilayah Persekutuan* [2007] MLJU 728; [2008] 3 CLJ 17, where the learned judge, Tengku Maimun (now former Chief Justice) held as follows:

> [8] Ternyata daripada peruntukan-peruntukan yang dirujuk di atas bahawa peguamcara bijaksana pemohon telah tersalah tanggapan apabila bergantung kepada penerimaan Borang H bagi menentukan tempoh masa untuk memfailkan bantahan. Tidak dinafikan bahawa pemohon hadir di hadapan responden untuk siasatan di bawah s 12 dan jelas siasatan telah ditamatkan pada 16 Jun 2005 di mana responden telah membuat award sebanyak RM95 skp bagi tanah dan RM100,000 bagi bangunan. *Memandangkan pemohon sendiri telah hadir, maka peruntukan yang terpakai bagi pemohon untuk mengemukakan bantahan ialah mengikut s 38(3)(a) Akta tersebut, iaitu dalam tempoh masa enam minggu daripada tarikh responden membuat award iaitu pada 16 Jun 2005. Berdasarkan eksh NA 2 di kandungan 4, responden juga telah mengeluarkan Borang G pada 16 Jun 2005.*
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> [9] Saya tidak dapat menerima hujahan peguamcara bijaksana pemohon bahawa oleh kerana Borang H hanya diterima pada 22 November 2005 maka enam minggu hanya bermula daripada tarikh tersebut kerana jelas daripada s 16 Akta tersebut, Borang H adalah berkaitan dengan penyerahan award dan bukan berkaitan dengan tempoh masa memfailkan bantahan.

[42] The High Court in *UDA Holdings Bhd v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2012] 6 MLJ 242; [2012] 10 CLJ 867 also came

to the same conclusion. In this case, the applicant argues that time starts to run from the receipt of Form H under s 16 of the LAA 1960 from the respondent, and therefore the applicant was well within time when they lodged Form N. So, the question for the court to adjudicate upon is from when does the period of six weeks for serving Form N begins to run under s 38 of the LAA 1960. The learned judge held as follows:

> [9] The question for the court to adjudicate upon is from when the six weeks' time period for serving Form 'N' begins to run. Looking at s 14(1) of the said Act it clearly provides that upon a conclusion of the enquiry held by the respondent the respondent prepares a written award under his hand under Form 'G'.
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> [10] To my mind Form 'G' is not an offer of compensation but a written award and is final and conclusive as provided in s 14(2) of the said Act. Section 16 deals with the service of the said written award under s 14(1) by issuing of Form 'H'. *Section 38(3)(a) of the Act, provides expressedly that as in our case the applicant was present when the respondent made its award, the period to file the Notice of Objection runs within six weeks from the date of the Land Administrator's award under s 14 of the Act*, with regards to filing of the Notice of Objection to the award Form 'N', s 38(3)(a) of the Act applies and it is to be observed, the said section makes no reference at all to s 16 of the said Act. It is also to be noted that had the applicant not been present at the enquiry then the argument that the six weeks runs from receipt of Form 'H' would tenable but not so in this case.
>
> [11] I am unable to accept submissions of counsel for the applicant that Form 'G' pursuant to s 14(1) of the said Act is merely an offer subject to Form 'H' being issued and served on the applicant. In my view the provisions of the said Act are clear and s 16 relates to the service of the written award of the respondent in Form 'H' and the options that are statutorily options available to the applicant. *Section 38(3)(a) of the said Act clearly sets out when the prescribed period the objection is to be filed and is to run from, ie, from the time the respondent made his award*. I find support for my approach in the dictum of His Lordship Zulkefli Ahmad Makinudin FCJ in the decision of the Federal Court in *Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan* [2008] 6 MLJ 763; [2009] 1 CLJ 13, and particularly at p 31 of the report para 73 and I quote:
>
> > [73] It is my view that if at all there has been a non-compliance by the respondent of the statutory requirements under the Act in making the award under s 14 of the Act, this issue should be taken up and argued at the hearing of the objection of the appellant in the reference to the High Court under s 36 of the Act. In fact on this point the appellant as an aggrieved party has a recourse to state his case in challenging the award of the respondent at that stage of the proceedings by producing its own Private Valuation Report before the court. But this is not the case before us now. The true position in the present case is that the appellant had been out of time in filing its application for objection to the award within six weeks from the date of the Land Administrator's award was made under s 14 of the Act. The appellant in fact has already failed in the first hurdle of satisfying the High Court and the Court of Appeal of the justification to grant enlargement of time to file objection proceedings under Form N.
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> [12] I refer also the case of *Dynamic Plantations Bhd v Pentadbir Tanah Daerah*

Segamat [2008] 7 MLJ 427; [2008] 3 CLJ 37 which forms the pivot of the applicant's submissions. In view of my interpretation of the relevant sections of the said Act I with respect, I am unable to agree with the views expressed by His Lordship in that case.

[13] I therefore rule that in this case where the applicant was present, when the respondent made his award, the period to file the objection runs from six weeks from the date the award was made and therefore the applicant was out of time in filing of Form 'N' and therefore prayer 1(a) of encl 1 is dismissed.

[43] We are therefore of the considered opinion that the High Court decision in *Dynamic Plantations Bhd* relied by the appellant is plainly wrong when the learned judge failed to consider the effects of sub-s 38(3) of the LAA 1960. Instead, the learned judge in *Dynamic Plantation* made a finding that the Land Administrator's award under s 14 of the LAA 1960 is not an award at all but an offer of compensation as determined by the Land Administrator, to the land owner. Since it is an offer, it must be communicated to the land owner via s 16, who later determines whether to accept the offer or rejects the same.

[44] In fact, s 14 is clear, that after completing the enquiry under s 12, the Land Administrator must prepare a written award in Form G and that the award is final and conclusive, regardless of whether the interested parties attended the enquiry. The said award can only be challenged via the filing of Form N under s 38. Therefore, it is wrong to say that the award under s 14 is merely an offer which the owner may accept or reject after informed of the same via From H.

[45] In the present appeal, when sub-s 38(3)(a) of the LAA 1960 is read with s 14, the appellant is required to make their objection by a written application in Form N to the Land Administrator pursuant to s 38(1) within six weeks from the date of the Land Administrator's award made at the conclusion of the inquiry, that is to say, six weeks from 19 June 2022. In other words, the last date for the appellant to file Form N was 30 July 2022. But in the present case, the appellant had only filed their objection on 18 September 2022 and there was therefore a delay of 50 days. By reason of the delay, the filling of the Form N was rightly rejected by the respondent.

Special circumstances to extend time

[46] As an alternative argument, the appellant submitted that sub-s 38(4) of the LAA 1960 also provides the court with the discretion to enlarge the timeframe for filing an objection to the Land Administrator's award if there are special circumstances deemed appropriate by the court.

[47] Subsection 38(4) of the LAA 1960 reads as follows:

A The period of six weeks prescribed by paragraph (3)(a) and the periods of six weeks and six months prescribed by paragraph (3)(b) shall not be capable of enlargement by any Court, except in such special circumstances as the Court may think fit.

B **[48]** In order for the appellant to succeed under sub-s 38(4) of the LAA 1960, the appellant will have to establish that there existed special circumstances to warrant the court to exercise that discretion. The onus is therefore on the appellant to show special circumstances and the court must exercise its discretion to enlarge the time for filing of objection sparingly.

C **[49]** In this regard, we make reference to the Federal Court case of *Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan* [2008] 6 MLJ 763; [2009] 1 CLJ 13, where the apex court held as follows:

D [50] In order for the appellant to succeed under s 38(4) it had to establish that there existed special circumstances to warrant the court to exercise that discretion. The onus therefore was on the appellant.

[51] The *discretion to be exercised by the court was not absolute and unqualified and had to be exercised sparingly* (see *Sungei Bongkoh Estate Sdn Bhd v Pentadbir Tanah Daerah Kuala Muda* [1994] MLJU 441; [1995] 1 CLJ 400). (Emphasis added.)

E **[50]** On the issue of what constitutes special circumstances, reference is made to the Federal Court case of *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257; [2004] 1 CLJ 239, where the judges of the court referred to the case of *Government of Malaysia v Datuk Haji Kadir Mohamd Mastan and another application* [1993] 3 MLJ 514 at p 521; [1993] 4 CLJ 98:

F An attempt was made to define special circumstances by Raja Azlan Shah (as His Majesty then was) in the case of *Leong Poh Shee v Ng Kat Chong* [1966] 1 MLJ 86; [1965] CLJU 212; [1965] 1 LNS 212, viz:

G *Special circumstances, as the phrase implies, must be special under the circumstances as distinguished from ordinary circumstances. It must be something exceptional in character, something that exceeds or excels in some way that which is usual or common*.

H The definition only serves to emphasise the fact that *there are myriad circumstances that could constitute special circumstances with each case depending on its own facts*. I am of the opinion that the list of factors constituting special circumstances is infinite and could grow with time. Any attempt to limit the list or close a category would be to impose a fetter on the exercise of the discretion of the court whether to I grant or stay an execution; making the discretion less of a discretion. This is surely not what discretion is all about.

[51] As to the court's discretionary power to grant an extension of time to file the Form N, in *Singapore Para Rubber Estate*'s case, Alauddin Mohd Sheriff CJ

(Malaya) (later PCA) remarked:

> [59] Any prejudice or injustice, if at all, caused to the appellant is actually the result of their own attitude.
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> [60] Had the appellant remained vigilant in making the application for enlargement of time, they would have had the opportunity to ventilate their case before the High Court.
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> [61] But the appellant had chosen to remain nonchalant and treated their right with apathy.

[52] In the same case, Zulkifli Ahmad Makinuddin FCJ (as he then was) observed:

> [73] ... The true position in the present case was that the appellant had been out of time in filling its application for objection to the award within six weeks from the date of the LA's award. The appellant in fact had already failed in the first hurdle of satisfying the High Court and Court of Appeal of the justification to grant an enlargement of time to file objection proceedings under Form N.

[53] Similarly, in *Damai Motor Kredit Sdn Bhd & Anor v Kementerian Kerja Raya Malaysia* [2012] MLJU 1803; [2015] 1 CLJ 44, this court made a similar pronouncement:

> [23] Whilst the learned Senior Federal Counsel may be right in his submissions that the period of six weeks to file any objection may be extended or enlarged by the court under special circumstances as provided by s 38(4) of the Act, we must emphasise that the burden is on the respondent to show special circumstances.
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> [25] In this regard, we make reference to the Federal Court case of *Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan* [2008] 6 MLJ 763; [2009] 1 CLJ 13; [2008] 2 MLRA 469, where the court said:
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> > [50] In order for the appellant to succeed under s 38(4) it had to establish that there existed special circumstances to warrant the court to exercise that discretion. The onus therefore was on the appellant.
> >
> > [51] The discretion to be exercised by the court was not absolute and unqualified and had to be exercised sparingly.

[54] In *Tan Bun Cheong lwn Pentadbir Tanah, Pejabat Daerah dan Tanah Bukit Mertajam, Pulau Pinang* [1992] MLJU 82; [1992] CLJU 85; [1992] 1 LNS 85, the learned judge applied the case of *Singapore Para Rubber Estate* and held as follows:

> Apakah yang dikatakan sebagai keadaan khas di dalam kes ini? Hanya satu, iaitu Pemohon menyangka dia tidak perlu membuat bantahan bertulis, tegasnya dalam Borang N.
>
> Seperti yang saya katakan tadi bahawa *kesilapan bona fide atau kejahilan tentang undang-undang bukanlah semestinya keadaan khas*, walaupun boleh diberi

A pertimbangan. Di dalam kes ini saya akui memang terdapat kesusahan jika permohonan ini tidak diluluskan. Tetapi bolehkah dikatakan dia tidak bersalah (*not at fault*)? Pada pandangan saya dia tidak boleh dikatakan tidak bersalah.

B **[55]** In the present appeal, the appellant argues that there are special circumstances warranting the court's discretion to grant the appellant's application under s 38(4) of the LAA 1960 and O 92 r 4 of the Rules of Court 2012. These circumstances include as follows:

(a) the compensation amount offered is inadequate;

C (b) the market value of the acquired land is too low and does not reflect the actual market value;

(c) no proper consideration was given in determining the compensation as provided in the First Schedule of the LAA 1960;

D (d) no consideration was given to the damages suffered and potential damages due to fragmentation and adverse effects on the remaining land;

(e) the award stated during the hearing on 19 June 2022 differs from the award recorded in Form H;

E (f) no compensation was provided for the cost of constructing the main access road, culvert system, road passage, terracing work, operational costs due to fragmentation, and adverse effects from the land acquisition;

(g) no compensation was provided for limitations on the use of technology; and

F (h) the total compensation does not reflect the market price.

[56] The appellant's main argument is that there are special circumstances because the Land Administrator only informed them and their valuer of the compensation amount verbally without providing any documents. This led to discrepancies between the valuer's notes and the amount recorded in Form H. Therefore, the appellant argued that the verbal decision by the Land Administrator does not constitute a valid award.

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H **[57]** On the discrepancy between the valuer's note and Form H, the learned judge made a finding of fact that the alleged discrepancy is an afterthought as the valuer did not file an affidavit to confirm the accuracy of his notes to support the appellant's affidavit.

I **[58]** Added to that, the learned judge found that the alleged discrepancy is an afterthought because normally in land acquisition cases, the key concern for landowners and their valuers is the compensation amount set by the Land Administrator. Both the valuer and the appellant would be eager to know the

exact compensation and compare it with their valuer's estimate. Given the importance of any differences, the learned judge made a finding that it is unlikely that they did not hear the amount announced by the Land Administrator.

[59] The learned judge is also of the opinion that if there is any prejudice or injustice, it is due to the appellant's own delay in filing the objection in Form N, despite already being aware of the process and procedures.

[60] With regards to the issue of the amount of compensation, we agree with the decision of this court in *Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan* [2007] 5 MLJ 601; [2007] 5 CLJ 71 that the mere difference of opinion by the Government and the appellant's private valuer, as regards the value of the land in was not a special circumstance.

[61] We are therefore of the considered opinion that the learned judge has taken all the relevant considerations before exercising his discretion not to grant the extension of time to file Form N, bearing in mind that an application for extension of time can only be granted sparingly under special circumstances. The learned judge has made a finding that the Land Administrator's actions were lawful and in line with procedures under the LAA 1960. Any disadvantage faced by the appellant was due to their own delay in filing the objection, despite knowing the process.

CONCLUSION

[62] For the aforesaid reasons, we find no merit in the appeal and the appeal is dismissed with costs. Decision of the learned judge is affirmed.

Appeal dismissed with costs.

Reported by Nabilah Syahida Abdullah Salleh